

SUPREME COURT OF WISCONSIN

In the Matter of the Amendment of
the Supreme Court Rules: SCR
Chapter 60 - Code of Judicial Conduct

ORDER
No. 95-05

When it adopted the Code of Judicial Conduct, effective January 1, 1997, the court stated that it would establish by rule a Judicial Conduct Advisory Committee to render opinions on the propriety of contemplated or proposed future conduct of judges under the Code. The Judicial Conduct Advisory Committee shall function pursuant to the rules and procedures adopted by this order. The initial members and terms of the Judicial Conduct Advisory Committee are:

Hon. Thomas Barland, Chair	Eau Claire	3 years
Hon. James Fiedler	Madison	2 years
Hon. Shelley Gaylord	Madison	1 year
Prof. Eric Godfrey	Ripon	3 years
Hon. David Hansher	Milwaukee	2 years
Hon. Barbara Kluka	Kenosha	1 year
Hon. Neal Nettesheim	Waukesha	3 years
Prof. Eva Soeka	Milwaukee	2 years

IT IS ORDERED that, effective the date of this order, the Appendix to the Code of Judicial Conduct, SCR Chapter 60, is created to read:

CODE OF JUDICIAL CONDUCT

APPENDIX

A. Rules of the Judicial Conduct Advisory Committee

(1) **Membership.** A judicial conduct advisory committee consisting of eight members appointed by the supreme court is created. Six members of the committee shall be selected from the judiciary of this state, one member shall be selected from attorneys licensed to practice law in this state, and one member shall be selected from the public. One judge member shall be a chief judge of a judicial administrative district, one judge member shall be a judge of the court of appeals, one judge member shall be a circuit judge on an urban area court, one judge member shall be a circuit judge on a rural area court, one judge member shall be a municipal judge, and one judge member shall be a reserve judge. Members shall serve for a term of three years and shall continue to serve until a successor is appointed, except that, to achieve staggered terms, two of the members first appointed shall serve for one year, three members for two years, and three members for three years. A member may serve not more than two successive three-year terms. Appointments to fill a vacancy shall be for the balance of the term vacated. Members of the committee shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the performance of their duties.

(2) **Duties.** The committee shall do the following:

(a) Render formal advisory opinions and give informal advice concerning the compliance of contemplated or proposed future conduct with the code of judicial conduct, provided that an opinion or advice shall not be rendered on a matter known to be the subject of a past or pending litigation, disciplinary proceeding, or investigation.

(b) Make recommendations to the supreme court for amendment to the code of judicial conduct or the rules governing the committee.

(c) Each year submit to the supreme court a report of its activities.

(3) **Administration.** The committee shall be administered under the direction of a chair appointed by the supreme court. The chair shall serve for a term of one year and may serve not more than two successive terms. Staff of the director of state courts office shall be available to answer inquiries concerning committee procedures, to receive and process requests for a formal advisory opinion, to maintain committee records, and to provide other staff assistance as appropriate.

(4) **Requests for opinion or advice.** Formal advisory opinions and informal advice may be requested by a judge or a candidate for judicial office about his or her own contemplated or proposed future conduct. A request for a formal advisory opinion shall be submitted in writing and

include a detailed statement of all relevant facts and circumstances, a discussion of the issues presented in the request, and references to the relevant provisions of the code of judicial conduct, advisory opinions, case law, and other authority the requestor has consulted in the matter. A request for informal advice may be made orally or in writing to any member of the committee. The identity, organizational affiliation, and geographic location of a person requesting a formal advisory opinion or informal advice shall be confidential.

(5) **Consideration of requests.** The committee shall determine whether a request for a formal advisory opinion should be resolved with a written, published opinion or by letter or other communication. A formal advisory opinion shall be decided by a majority vote of the committee. The committee may confer in person, by correspondence or by telephone or other electronic means as needed to conduct committee business and consider requests for formal advisory opinions. The committee shall maintain records of its determinations and formal advisory opinions.

(6) **Formal advisory opinion.** Formal advisory opinions shall be edited to omit the names of persons, courts, places and any other information that may tend to identify the requestor or any other person. Before issuing a formal advisory opinion, the committee shall provide a copy of the

opinion to the requestor, and the requestor may ask the committee to omit from it specified information that may tend to identify the requestor or any other person. In the event necessary editing produces an opinion that the committee determines is not meaningful, the committee may determine that a formal advisory opinion not be published and distribute it only to the requestor.

(7) **Opinion distribution.** Except as provided in sub. (6), a formal advisory opinion shall be distributed to the requestor, the justices and clerk of the supreme court, the chief judge of the court of appeals, the chief judges of the judicial administrative districts in this state, the director of state courts, the state law library, and the state bar of Wisconsin. Formal advisory opinions shall be accumulated and distributed to all judges at least annually by the office of the director of state courts.

(8) **Reconsideration.** Within 30 days after the distribution of a formal advisory opinion to all judges, a person authorized to request an opinion may ask the committee to reconsider the formal advisory opinion by submitting a written request for reconsideration explaining the basis for the request. The committee shall respond to the request by reaffirming or revising the formal advisory opinion or by denying the request. The committee may, on its own motion, reconsider a formal advisory opinion at any time. A revised

formal advisory opinion shall be distributed as provided in sub. (7)

(9) **Effect of opinion or advice.** (a) A formal advisory opinion shall not be binding upon the Wisconsin judicial commission or the supreme court in the exercise of their judicial discipline responsibilities. The fact that a judge or candidate for judicial office has requested and relied upon a formal advisory opinion should be taken into account by the Wisconsin judicial commission in its disposition of complaints and in determining whether to file a formal complaint with the supreme court. If a judge or candidate for judicial office has requested and received a formal advisory opinion, compliance of the judge or the candidate for judicial office with that opinion shall constitute evidence of a good faith effort to comply with the code of judicial conduct in a judicial disciplinary proceeding based, in whole or in part, on the conduct for which the opinion was requested.

(b) Reliance of a judge or candidate for judicial office on informal advice given by the committee or by any of its members may not constitute evidence of a good faith effort to comply with the code of judicial conduct.

(10) **Confidentiality.** With the exception of published formal advisory opinions, all opinions, inquiries, replies, circulated drafts, records, documents, files, communications with staff, and proceedings of the committee shall be

confidential. Confidentiality does not apply if the person requesting the formal advisory opinion or informal advice expressly waives confidentiality in writing or relies on the opinion or advice in a judicial disciplinary proceeding. Notwithstanding any waiver, committee deliberations shall be confidential.

(11) **Immunity.** Members of the committee shall be immune from liability for any conduct relating directly or indirectly to their duties for the committee. When acting in their advisory capacity, the judge members of the committee shall be exempt from the provisions regarding disciplinary responsibilities in the code of judicial conduct and the attorney members of the committee shall be exempt from the provisions regarding reporting misconduct in the rules of professional conduct for attorneys.

B. Procedures of the Judicial Conduct Advisory Committee

(1) **Request for Formal Advisory Opinion.** A request for a formal advisory opinion shall be in writing addressed to the chair of the committee in care of the director of state courts Office, P. O. Box 1688, Madison, WI 53701-1688. The request shall include a detailed statement of all relevant facts and circumstances, a discussion of the issues presented in the request, and references to the relevant provisions of the code of judicial conduct, advisory

opinions, case law, and other authority the requestor has consulted in the matter. The request shall be forwarded to the chair of the committee. The identity, organizational affiliation, and geographic location of a person requesting a formal advisory opinion shall be confidential.

(2) **Consideration of Request.** (a) The chair of the committee shall assign requests for formal advisory opinions in rotation to committee members for research and preparation of preliminary recommendations and draft opinions. If the information provided in the request is insufficient in detail to enable the committee to render a formal advisory opinion, the committee shall request supplemental information from the requestor to enable it to render a formal advisory opinion. If the requested supplemental information is insufficient or is not provided within 10 days of the request, the committee shall so state in a letter to the requestor and shall not render a formal advisory opinion.

(b) Within 15 days after receipt of the assignment of the request or receipt of sufficient supplemental information, if requested, the member to whom a request is assigned shall circulate to all committee members a preliminary recommendation and draft opinion. Prior to circulation of a preliminary recommendation and draft

opinion, the member to whom a request is assigned may consult with other committee members.

(c) Within 10 days after the circulation of a preliminary recommendation and draft opinion, committee members shall circulate to all other committee members any comments on the recommendation and opinion.

(d) The committee may consider requests for formal advisory opinions and opinion drafts in person, by telephone, by facsimile transmission, by mail, or by any other electronic means.

(e) Within 10 days after the last day for comment on a preliminary recommendation and draft opinion, the committee member to whom the request has been assigned shall circulate a final draft opinion to the committee members. Formal advisory opinions shall be decided by a majority vote of the committee within five days after circulation of the final draft opinion.

(f) Where appropriate, the committee may respond to a request for a formal advisory opinion by referring the requestor to a prior formal advisory opinion and by so doing need not issue a new formal advisory opinion.

(3) **Form of Opinion.** Prior to issuance, a formal advisory opinion shall be edited to omit the names of persons, courts, places and any other information that may tend to identify the requestor or any other person. The

committee shall provide a copy of the proposed opinion to the requestor, and within 10 days of receipt, the requestor may ask that specified information be omitted from it that may tend to identify the requestor or any other person. A formal advisory opinion shall include a statement that it does not purport to address the provisions of the Code of Ethics for Public Officials and Employees, subchapter III of ch. 19 of the statutes.

(4) **Issuance and Distribution of Formal Advisory**

Opinion. Upon approval of a majority of the committee, a formal advisory opinion shall issue in written form sent to the director of state courts office. The director of state courts office shall send a copy of the formal advisory opinion to the requestor, the justices and the clerk of the supreme court, the chief judge of the court of appeals, the chief judges of the judicial administrative districts, the state law library and the State Bar of Wisconsin. The director of state courts office shall retain a copy of each formal advisory opinion and accumulate and distribute at least annually to all judges a copy of each formal advisory opinion issued by the committee. The director of state courts office shall maintain the records of the committee's determinations and formal advisory opinions.

(5) **Reconsideration.** (a) Within 10 days after receipt of a formal advisory opinion, the requestor may request in

writing to the committee that it reconsider the opinion, explaining the basis for that request. Within 10 days after receipt of a request for reconsideration from the requestor, the committee shall respond by granting the request and approving or revising the opinion or by denying the request. Upon granting a request for reconsideration, the committee shall consider the matter as set forth in sec. (2).

(b) Within 30 days after distribution of a formal advisory opinion to all judges, a person authorized to request an opinion may request in writing to the committee that it reconsider the opinion, explaining the basis for that request. The committee shall respond as set forth in sub. (a).

(c) The committee may, on its own motion, reconsider a formal advisory opinion at any time.

(d) A revised formal advisory opinion shall be issued and distributed as provided in sec. (4).

(6) **Requests for Informal Advice.** Requests for informal advice on the interpretation and application of the code of judicial conduct to specific factual situations may be submitted in writing to the chair of the committee or communicated in person or by telephone to any member of the committee. Any member of the committee may respond to the request for informal advice. Reliance on informal advice may

not constitute evidence of a good faith effort to comply with the code of judicial conduct.

IT IS FURTHER ORDERED that the court will review the operation of the Judicial Conduct Advisory Committee after it has been functioning for two years.

IT IS FURTHER ORDERED that notice of this amendment of the Supreme Court Rules shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 7th day of March, 1997.

BY THE COURT:

Marilyn L. Graves, Clerk